

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GNANA M. CHINNIAH a/k/a
GNANACHANDRA M. CHINNIAH
and SUGANTHINI CHINNIAH,

Plaintiffs

v.

EAST PENNSBORO TOWNSHIP,
JEFFREY S. SHULTZ, KAREN
DUNKLE, JAMES HERZLER,
JOHN KUNTZELMAN,
CHRISTOPHER UNDERHILL,
LAW OFFICES OF HARTMAN
UNDERHILL & BRUBAKER,
JOSHUA AUTRY, JEFFREY
CONRAD, LAW OFFICES OF
CLYMER MUSSER & CONRAD,
CUMBERLAND COUNTY TAX
CLAIM BUREAU, and
CUMBERLAND COUNTY
HOUSING REDEVELOPMENT
AUTHORITY,

Defendants

Civil Action No. 1:15-CV-2240

JURY TRIAL DEMANDED

**DEFENDANTS EAST PENNSBORO TOWNSHIP, JEFFREY S. SHULTZ,
KAREN DUNKLE, JAMES HERZLER AND JOHN KUNTZELMAN'S
REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

Defendants, East Pennsboro Township, Jeffrey S. Shultz, Karen Dunkle, James Herzler¹ and John Kuntzelman ("Township Defendants"), by and through their counsel, Marshall Dennehey Warner Coleman and Goggin, respectfully submit this Reply Brief in support of their Motion to Dismiss.

I. INTRODUCTION

The Township Defendants file this Reply Brief to address the following issue:

- A. Plaintiffs' failure to respond to the Township Defendants' Motion to Dismiss deems the Motion unopposed.

II. ARGUMENT

- A. Plaintiffs' failure to respond to the Township Defendants' Motion to Dismiss deems the Motion unopposed.*

The Township Defendants filed their Motion to Dismiss and Brief in Support on February 16, 2016. *See* ECF 40-41. Pursuant to Local Rule 7.6, Plaintiffs were required to file a brief in opposition within 14 days after service of the Township Defendants' Brief. As Plaintiffs are not ECF users, Plaintiffs were served via U.S. Mail. The Township Defendants' Motion to Dismiss and supporting Brief were mailed to Plaintiffs on February 16, 2016. Pursuant to Federal Rule of Civil Procedure 5(b)(2)(C), service is complete upon mailing. However, Plaintiffs are provided 3 days in addition to the 14 days provided by

¹ The undersigned represent James Herzler in his former capacity as East Pennsboro Township Commissioner only.

Local Rule 7.6. FED. R. CIV. P. 6(d). Thus, Plaintiffs' response was due no later than March 4, 2016. Plaintiffs failed to file any response to the Township Defendants' Motion to Dismiss as of the date of this filing. Local Rule 7.6 also provides: "Any party who fails to comply with this rule shall be deemed not to oppose such motion." Accordingly, Plaintiffs failure to respond to the Township Defendants' Motion to Dismiss deems it unopposed.

Furthermore, this Court issued a Standing Practice Order specific to pro se plaintiff matters ordering Plaintiff to comply with Local Rule 7.6. *See* ECF 4. The Middle District has previously held:

At the outset, under the Local Rules of this Court the plaintiff should be deemed to concur in this motion to dismiss, since the plaintiff has failed to timely oppose the motion, or otherwise litigate this case. This procedural default frustrates and impedes efforts to resolve this matter in a timely and fair fashion, and under the Rules of this Court warrants dismissal of the action . . . It is now well-settled that "Local Rule 7.6 can be applied to grant a motion to dismiss without analysis of the complaint's sufficiency 'if a party fails to comply with the [R]ule after a specific direction to comply from the court.' " In this case the plaintiff has not complied with the Local Rules, or this Court's Standing Practice Order, by filing a timely response to this Motion.

Bullock v. IRS, 2014 U.S. Dist. LEXIS 54251, at * (M.D. Pa. Jan. 3, 2014), *adopted by* 2014 U.S. Dist. LEXIS 52879 (M.D. Pa. Apr. 16, 2014) (Kane, J.). Thus, this Court should grant the Township Defendants Motion to Dismiss.

III. CONCLUSION

For the foregoing reasons, East Pennsboro Township, Jeffrey S. Shultz, Karen Dunkle, James Herzler, and John Kuntzelman respectfully request that this Honorable Court grant their Motion to Dismiss and dismiss Count I of Plaintiffs' Complaint as to moving Defendants with prejudice.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN**

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Township, Jeffrey S. Shultz, Karen Dunkle,
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Date: March 8, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following known counsel and parties of record this 8th day of March, 2016 via electronic filing:

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